

Nadler's Subcommittee Delves into U.S. Military Commissions Debate

Wednesday, 08 July 2009

WASHINGTON, D.C. – Today, Congressman Jerrold Nadler (NY-08), chair of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, chaired an oversight hearing on the “Legal Issues Surrounding the Military Commissions System.” The Subcommittee examined the proposed reforms of the U.S. military commissions and whether – as a matter of law and policy – the system can be reformed sufficiently to create a legitimate legal framework for trying suspected terrorists.

“I appreciate President Obama’s commitment to closing the prison facility at Guantanamo and to reviewing more just and efficient methods to process the detainees left there,” said Nadler. “But what is absolutely clear is that our experiment with military commissions has been an abysmal failure, resulting in only three convictions in the seven years since the 9/11 terrorist attacks and leading to the prolonged detention of individuals without any meaningful determination of whether there are adequate grounds to detain or try them. This failure is compounded by the fact that it has yet to be shown why we need to resort to military commissions, particularly given the success in prosecuting terrorists like Ramzi Yousef, the convicted mastermind of the 1993 bombing of the World Trade Center.”

“We already have federal courts and courts-martial in place,” continued Nadler, “systems which can protect us from those who would do us harm, and which are consistent with our laws, our treaty obligations and our values. We are the United States of America, and we have traditions and beliefs worth fighting for, and worth preserving.”

The expert witnesses at the hearing were: Congressman Adam Schiff (D-CA); Lt. Col. Darrel Vandeveld, former prosecutor of the Guantanamo Bay Military Commissions; Deborah Pearlstein, Associate Research Scholar at Princeton University; Thomas Joscelyn, Senior Fellow and Executive Director of the Center for Law and Counterterrorism at the Foundation for Defense of Democracies; and, Denny LeBoeuf, Director of the ACLU’s John Adams Project.

In late 2001, two months after the September 11th terrorist attacks, President Bush signed an executive order establishing a military commission system for the trial of detainees. That order drew immediate criticism and concern that individuals might be detained, tried and convicted without adequate due process. Since 2001, approximately 800 individuals have been detained at Guantanamo Bay, Cuba, with some 500 already having been released before President Obama took office. Roughly two hundred and forty people now remain in the detention facility at Guantanamo.

In January, President Obama announced his intention to close the facility and ordered a complete review to determine how best to process the remaining Guantanamo detainees, while temporarily halting use of the military commissions pending the outcome of that review and an examination of the adequacy of the military commission process itself.

In his remarks on national security more recently, the President confirmed that, whenever possible, the Administration will use the federal courts to prosecute Guantanamo detainees who have violated criminal laws, but also indicated that military commissions remain an appropriate and necessary venue for the prosecution of others. The President acknowledged that the existing military commission system fails to provide a legitimate legal framework for convictions, but expressed his belief that, with sufficient reform, a military commission system could do so.

The following is the text of Nadler’s opening statement:

“Today, the Subcommittee examines the military commission system, and, more importantly, how we as a nation

can work together productively to clean up the terrible legacy of the Bush administration's detention policies in a manner that provides us with a legitimate legal framework going forward.

"One question which arises immediately, in view of the apparent Administration position, as stated yesterday by Department of Defense General Counsel Jeh Johnson, that we can hold indefinitely even people acquitted in a military tribunal, is what is the purpose of the military tribunal in the first place. Over the past seven years, approximately 800 individuals have been detained at Guantanamo Bay, Cuba, with some 500 already having been released before President Obama took office in January 2009. In those seven years, only three detainees were convicted of terrorism offenses using the military commissions. Approximately 240 individuals remain at the facility. Most of these men have been held for at least four years; some have been detained for more than six years — all without being charged, or tried or convicted of any crime — a blot on American justice by any standard.

"In addition to Guantanamo, we have also detained individuals in other parts of the world, including Afghanistan. Some of these cases are fairly straightforward, some are not. But for each of these cases, we need to have a means of determining whether the individual is a combatant, lawful or otherwise, whether they are guilty of a crime, and whether they are a threat to the United States.

"We must decide how to deal with these individuals in a manner that ensures that our nation is protected from those who would do us harm, and that is consistent with our laws, our treaty obligations, and our values. We are the United States of America, and we have traditions and beliefs worth fighting for, and worth preserving.

"The problem will not go away simply because we close Guantanamo. We are still fighting in Afghanistan and Iraq. We are still battling terrorists around the world. We will continue to have to intercept and detain individuals who have attacked us or who threaten us — or who we, perhaps mistakenly, believe to do so. We need to be sure that, however we handle these cases, we do not conduct kangaroo courts.

"Remember what it is we are trying to do here. We need to sort out who among these detainees are truly dangerous, or have truly done something for which they must be detained, and who are not. These detainees are accused terrorists. While the previous administration was fond of reminding people that the detainees were 'the worst of the worst,' the Bush administration released the vast majority of them, approximately 500 in all. The people whom we have detained because they were turned over to us by someone with a grudge, or by someone who wanted to collect a bounty and who have, in fact, committed no offense against us, do not belong there. We have an obligation to determine who should and should not be there, and to afford fair trials to those we believe have committed crimes and to release all others. This is especially important if our government plans to seek prison sentences or to execute those convicted.

"This debate has been dominated by a great deal of fear mongering. That is no way to deal with a problem of this magnitude. Much as some people would like to drop these detainees down a hole and forget about them, that is simply not an option — legally or morally. It is also not necessary. We are not the first country in history to have to deal with potentially dangerous people. Indeed, this is not the first time this country has had to deal with potentially dangerous people.

"I can assure my colleagues who are terrified that some of these detainees might be brought to the U.S. that we can handle it. We've got a few such guests in my district in New York, and we know how to deal with them. People are not panicking in the streets — it is New York, after all — and no one has been harmed.

"We would never tolerate this sort of detention policy from any other nation, and we should not accept it in ours.

"I do not want to underestimate the enormity of the challenge, both from a security standpoint, and a legal one. Some of these people are extremely dangerous, and some of them have done some truly terrible things. We need to be sure that we are protected from harm. It is also true that the Bush administration's rampant lawlessness has erected legal obstacles to pursuing some of the cases that need to be prosecuted. To give a prime example, the use of torture, as military prosecutors have told us, may have made some prosecutions impossible in all but the most farcical of trials. That is an unnecessary obstacle, but a real one. We cannot ignore it; we have to deal honestly with it.

"I look forward to the testimony of our witnesses, and I hope that you will be able to provide some guidance as we look forward."